

Grievance Commission

File No. 97-38

BOARD OF OVERSEERS OF THE BAR

Petitioner

vs

JOHN L. CARVER, ESQ.

of Belfast, Maine

Maine Bar No. 209

Respondent

)

) GRIEVANCE COMMISSION'S

) AMENDED REPORT OF

) PROCEEDINGS

) FINDINGS AND CONCLUSION

) M. Bar R. 7.1(e)(4)

)

)

### PROCEEDINGS

On February 12, 1998, this matter came before Panel C of the Grievance Commission at which time the Board of Overseers was represented by Bar Counsel J. Scott Davis. The Respondent, John L. Carver, Esq., and his counsel, Malcolm L. Lyons, Esq. were also present. The complainant, Herbert I. Hunt, was not present at the proceeding but by mailing of December 23, 1997 had earlier been provided by Bar Counsel with a copy of a proposed disposition agreement of the parties as described below. Although different objections were earlier made known and resolved between Mr. Hunt's attorney and Bar Counsel, on the eve of this proceeding Mr. Davis was informed by Mr. Hunt's attorney of Mr. Hunt's disagreement that his complaint's allegations relating to a dispute of Attorney Carver's fee, although set forth within the disciplinary petition, had been omitted by counsel from that agreement. Therefore, although a preliminary report was initially issued on February 12, 1998, at Bar Counsel's initiation this matter was reconsidered by a portion of the panel on March 10, 1998. Bar Counsel, Mr. Lyons and Mr. Hunt's attorney then summarized that fee issue and objection for the Panel. Bar Counsel also continued to indicate that his position for the Board remained that the appropriate allegations and established misconduct are as set forth below.\*

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\* Bar Counsel also indicated that even if the omitted fee allegations, including any attempts to collect this fee, had been proven or admitted as part of counsel's stipulated agreement, his recommended appropriate disciplinary sanction would remain as set forth and issued herein. Therefore, it was agreed by the Petitioner and the Respondent that the fee issue is neither before the Panel nor part of its findings.

By agreement of the parties, Board Exhibits #1-10 and #6(a) were admitted. The parties also agreed to a submission of factual findings and proposed disposition, which the panel hereby adopts as described below.

Attorney Carver had represented Mr. Hunt through the late 1980's in contentious post-divorce custody proceedings involving Mr. Hunt's first wife. At the conclusion of that matter, Mr. Hunt owed Attorney Carver \$2,892.29, with the last billing to Mr. Hunt of that amount occurring on or about October 10, 1990. Without having satisfied that outstanding indebtedness, Mr. Hunt nevertheless again sought Mr. Carver's legal services in August of 1991 concerning a possible divorce from his second wife.

Due to the outstanding indebtedness, Attorney Carver declined to undertake the new representation without either payment being rendered by Mr. Hunt for the outstanding balance and a retainer remitted for the new matter, or agreement to some other arrangement to address Mr. Hunt's debt.

Since Mr. Hunt was financially unable to make any current payments as requested by Attorney Carver, payment for Attorney Carver's past and current services was arranged by Attorney Carver's preparation and execution of a promissory note of \$8,000.00 (Exhibit #1) with interest dated August 23, 1991 and a corresponding mortgage deed (Exhibit #2) of that same date. Attorney Carver recalls that he informed Mr. Hunt orally on August 23, 1991 that he could not advise Mr. Hunt concerning the note and mortgage and that Mr. Hunt might wish to obtain separate legal counsel regarding execution of those documents. However, there is no contemporaneous written documentation to confirm those communications, nor any written consent from Mr. Hunt to enter into this business transaction with Attorney Carver, and Mr. Hunt denies any such statement or suggestion being made by Attorney Carver. In any event, three days later, on August 26, 1991, Attorney Carver issued an engagement letter (Exhibit #3) concerning

Mr. Hunt's current divorce matter, and had Mr. Hunt sign that letter on that same date. Thus, since Mr. Hunt's execution of that August 26, 1991 letter as being "seen and agreed to" was after the occurrence of the business transaction he had engaged in with Attorney Carver reference the promissory note and mortgage deed, it failed to constitute any form of effective consent to this attorney/client business transaction.

Further, the mortgage deed related to property that became a significant issue of the second Hunt divorce action and new Carver/Hunt representation, i.e., whether that property, the Hunt home, constituted martial or non-marital property.

### **FINDINGS**

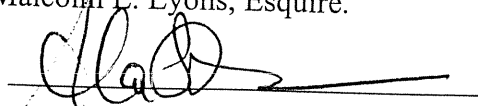
As a result of that transaction of August 23, 1991, the panel concludes and finds that Attorney Carver failed to timely proceed through the necessary steps required by then applicable M. Bar R. 3.6(i)(1), (2) (now M. Bar R. 3.4(f)(2)) in that Mr. Hunt was not advised in writing to seek independent professional advice of counsel of his own choice concerning that transaction, nor did he consent in writing thereto at the time the transaction actually occurred. In addition, Attorney Carver thereby improperly acquired an interest in the subject matter of the divorce litigation, which is prohibited by Maine Bar Rule 3.7(c).

### **CONCLUSION**

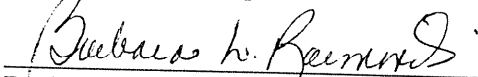
From the foregoing, it is clear that Attorney Carver, in an attempt to protect his own, albeit legitimate, financial interests, failed to comply with the requirements of M. Bar R. 3.6(i)(1), (2), and thus engaged in a business transaction with a current client without making sure that the necessary requirements and steps of the Maine Bar Rules had been complied with. As a result of the circumstances and his failure to meet those requirements in this transaction, Attorney Carver and Mr. Hunt turned into potential adversaries, and Attorney Carver obtained a mortgage interest in Mr. Hunt's property that may well not have otherwise occurred, had Mr.

Hunt been given written notice and a chance to seek independent counsel prior to executing either document. As a result, the appropriate disposition of this matter is the issuance of a reprimand of Attorney John L. Carver. Bar Counsel is hereby instructed to deliver that reprimand upon Attorney Carver through his counsel, Malcolm L. Lyons, Esquire.

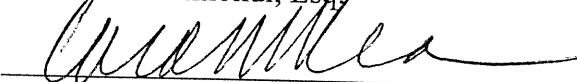
Dated: June 11 , 1998



Alan G. Stone, Esq., Chair of Panel C



Barbara L. Raimondi, Esq.



Carol DiBacco Rea

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